IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 127 OF 2003.

State through Public Prosecutor,
Panaji. ... Applicant.

Versus

Prakash Vasudev Walke,
r/o H. No. 129, Ward
No. 12, Khorlim, Mapusa. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Applicant.

Mr. S.D. Lotlikar, Senior Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 26th June 2003.

ORAL ORDER.

State, being aggrieved by the Judgment, dated 16th October 2002, delivered by the IInd Additional Sessions Judge, North Goa, Panaji, in Criminal Appeal No. 32 of 2001, acquitting the respondents/accused, has presented this application seeking leave to file an appeal against acquittal.

2. The respondent/accused alongwith two other accused were prosecuted for offences punishable under Sections 324, 325 and 504 read with Section 34 of the Indian Penal Code, in Criminal Case No. 412/82/Jr, before the Judicial Magistrate, First Class, Mapusa. During the pendency of the trial, original accused no. 2 expired and, thus, the present respondent/accused and one Gurudas Valke/original accused no. 3 faced the trial. The prosecution had alleged that on 8th

November 1982 at 10.00 a.m. the accused in furtherance of their common intention threw some corrosive substance on the complainant/P.W.1 Suresh Lotlikar and also abused him with filthy words when he had gone to the house of the accused to question them about the abuses given to his brother. P.W.1 Suresh had sustained burn injuries on his face and other parts of his body and permanent disfiguration of his face.

3. The learned trial Court had framed a charge against the respondent/accused and the original accused no. 3 for an offence punishable under Section 325 of the Indian Penal Code. The prosecution examined 10 witnesses in support of its case. The defence of the accused was that on 8th November 1982 at about 10.00 p.m. the complainant and one Vinayak Bhiku Lotlikar had trespassed into their house and had assaulted them and their mother and the deceased/original accused no. 2 and had caused simple injuries. P.W.1 Suresh and Vinayak Lotlikar had also abused them in filthy language and broke the glasses of the windows and planks of the door of their house. A report, accordingly, had been filed and the offence at Crime No. 318/92 had been registered against P.W.1 Suresh and Vinayak Lotlikar. Both of them were prosecuted in Criminal Case No. 411/82/B. The accused had also examined two witnesses in their defence.

4. The learned trial Court, by its Judgment, dated 10th March 2000, had acquitted the original accused no. 3

and had convicted the present respondent/accused for an offence punishable under Section 334 of the Indian Penal Code and had sentenced him to imprisonment till the rising of the Court and a fine of Rs. 2,000/- and in default to undergo simple imprisonment for 7 days. The respondent herein, being aggrieved by the aforesaid conviction and sentence had preferred Criminal Appeal Mo. 10 of 2000 before the Sessions Court and the learned Additional Sessions Judge had quashed and set aside the said conviction, holding that Section 334 of the Indian Penal Code was not applicable and in the facts and circumstances of the case an offence would fall under Section 324 of the Indian Penal Code. The learned Additional Sessions Judge, therefore, directed the trial Court to re-hear the arguments and pass necessary Order. The learned trial Court, thereafter, re-heard the arguments and passed the Judgment, dated 16th July 2001, convicting the respondent/accused for an offence punishable under Section 324 of the Indian Penal Code and sentenced him to simple imprisonment for one month and fine of Rs. 1,000/- in default to undergo 7 days simple imprisonment. Against the said conviction and sentence, the respondent/accused had preferred Criminal Appeal No. 32 of 2001, which, as aforestated, was allowed by the IInd Additional Sessions Judge, Panaji, acquitting the respondent/accused.

5. The learned lower appellate Court in paragraph 11 of the Judgment has referred to several contradictions in the

evidence of P.W.1 Suresh. P.W.1 Suresh had stated that his brother who is staying in front of the house of the accused is Shyamsundar Pednekar. P.W.1 has denied the suggestion that he gave the name of his brother as Shyamsundar Lotlikar. He was confronted with his complaint at Exhibit P.W.1/A, wherein the name of his brother is mentioned as Shyamsundar Lotlikar. P.W.1 could not remember whether there was a pathway between the house of the accused and Pednekar. When confronted with his complaint at Exhibit P.W.1/A, there was a mention of a pathway. Similarly P.W.5 Vinayak Lotlikar was confronted with his police statement wherein it had not been recorded that accused no. 1 and 2 came to the gate of the compound and suddenly threw acid on their person. Similarly, the learned lower appellate Court has made a reference to the contradictions in the evidence of P.W.7 Vinod Khedekar. The learned lower appellate Court also found that the prosecution had not examined the Investigating Officer and the case was closed by the learned trial Court as a period of two years from the date of framing of charge was over. The lower appellate Court also found that serious prejudice was caused to the accused because they could not prove the contradictions and omissions through the evidence of the Investigating Officer.

6. In paragraph 12 of the Judgment, the learned lower appellate Court found that neither P.W.3 Eknath Sapte, P.W.4 George Fernandes, P.W.7 Vinod Khedekar nor P.W.9 Anil Karekar

were eye witnesses to the incident of throwing of corrosive substance. The two eye witnesses were P.W.1 Suresh and P.W.5 Vinayak. P.W.1 had stated that when the corrosive substance was thrown on him, he was alone. Even in the cross-examination P.W.1 Suresh has maintained that excepting the accused no one else was present. P.W.5 Vinayak, who is the brother of P.W.1 Suresh, claims to be an eye witness and present at the scene of offence. He also claims that some corrosive substance had fallen on his shoulder. He further claims that since he had to go to work urgently, he did not go to the hospital.

7. The learned lower appellate Court further found that the learned trial Court had not discussed the evidence of the two defence witnesses, namely, D.W.1 Santosh Walke and D.W.2 Smt. Vasundhara Walke. The learned trial Court had not written any finding regarding the reliability of these witnesses. It is an admitted fact that original accused no. 2 was injured. P.W.1 Suresh and P.W.5 Vinayak had maintained that the accused had not sustained any injuries at the time of the incident. The learned lower appellate Court, therefore, found, particularly in view of the counter case set up by the accused, that the prosecution had suppressed the genesis of the incident and, therefore, P.W.1 Suresh and P.W.5 Vinayak could not be relied upon implicitly. The learned lower appellate Court also found that the recovery of a cup at the instance of the respondent/accused was not

proved at all.

8. Taking an overall view of the entire prosecution evidence, therefore, the learned lower appellate Court found that the prosecution had not been able to prove beyond reasonable doubt that the respondent/accused caused hurt to Suresh by throwing corrosive substance on him and, therefore, acquitted the respondent/accused.

9. With the assistance of the learned Public Prosecutor and Mr. Lotlikar, the learned senior advocate for the respondent/accused, I have perused the depositions, which have been made available to me, and I find that the findings recorded by the learned lower appellate Court are based on the evidence on record and as such no interference is warranted. This is an appeal against acquittal and the view taken by the learned lower appellate Court is a possible view, which can be taken on the basis of the evidence on record. There is no perversity in the reasoning of the learned lower appellate Court and, therefore, according to me, the Judgment of the learned lower appellate Court acquitting the respondent/accused does not need any interference.

10. Criminal Miscellaneous Application is dismissed. Leave is refused.

(P.V. HARDAS)
JUDGE.

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